

## EMBEZZLEMENT OF INDIAN TRIBAL ORGANIZATION PROPERTY

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JUNE 25, 1956.—Referred to the House Calendar and ordered to be printed

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Mr. WILLIS, from the Committee on the Judiciary, submitted the following

### R E P O R T

[To accompany H. R. 6403]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6403) to amend title 18, entitled "Crimes and Criminal Procedure," of the United States Code, to provide a criminal sanction for the embezzlement or theft of the property of Indian tribal organizations, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

1. Page 2, line 5, strike out "abstracts, purloins,".
2. Page 2, line 14, strike out "abstracted, purloined,".

#### AMENDMENTS

The two amendments are technical in nature. They are intended merely to eliminate unnecessary and redundant language, the other language of the bill being sufficient to reach the offenses intended to be covered by this new section.

#### PURPOSE

The purpose of this legislation is to protect Indian tribal organizations from the actions of dishonest and corrupt tribal officials and from others who embezzle or steal tribal funds or property. It provides for the punishment of persons holding positions of trust in tribal organizations who abuse their responsibilities by diverting tribal funds to their own pockets or those of their friends. It also provides for the punishment of other forms of theft or embezzlement from Indian tribal organizations.

## STATEMENT

The Indian Reorganization Act of June 18, 1934 (48 Stat. 984) deals with a wide variety of subjects, including land, credit, education, and Indian employment. During the years since its adoption, situations have been encountered from time to time that involve, the misuse or misappropriation of tribal funds and other improper actions by tribal officials and other persons. While many trust and other fiduciary positions have been created to take care of tribal business affairs and tribal moneys, corresponding safeguards in the Federal law or in the tribal codes have not kept pace with these activities. Even in those instances where criminal sanctions are provided in the tribal codes, tribal members in some instances have been reluctant to bring actions against apparently faithless tribal officials.

Under authority of the Indian Reorganization Act, many Indian groups are qualified to obtain control of substantial sums of money derived from oil and gas leases, timber sales, and the like, to hold these funds in the tribal treasuries, and to expend them subject to the tribal constitutions and charters. In addition, under annual appropriation acts adopted by the Congress, tribal funds in the Treasury of the United States may be advanced to Indian tribes.

Under these circumstances, it is felt that adequate Federal penal safeguards are necessary to protect the tribal members and the public generally from actions of dishonest and corrupt tribal officials, and of other persons, including non-Indians, who commit these offenses involving tribal property.

This legislation has been requested by the Department of the Interior, and its executive communication, together with the views of the Department of Justice, are made a part of this report.

DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D. C., May 13, 1955.

HON. SAM RAYBURN,

*Speaker of the House of Representatives,*

*Washington, D. C.*

MY DEAR MR. SPEAKER: Enclosed is a draft of a proposed bill to amend title 18, entitled "Crime and Criminal Procedure," of the United States Code, to provide a criminal sanction for the embezzlement or theft of the property of Indian tribal organizations.

We recommend that this proposed bill be referred to the appropriate committee for consideration, and we further recommend that it be enacted.

The principal objective of the proposed bill is to protect Indian tribal organizations, especially those created pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), from the actions of dishonest or corrupt tribal officials. It provides for the punishment of persons holding positions of trust in tribal organizations who abuse their responsibilities by diverting tribal funds to their own pockets or those of their friends. It also provides for the punishment of other forms of theft or embezzlement from Indian tribal organizations. The terms of the bill are modeled upon such existing criminal laws as sections 641, 656, and 660 of title 18 of the United States Code.

The Indian Reorganization Act deals with a wide variety of subjects, including land, credit, education, and Indian employment. One of its chief designs was the development of Indian self-government. At the present time there are 195 tribes, bands, or identifiable groups under the act. Ninety-six of these groups have adopted constitutions and bylaws, and 73 of them have been granted charters permitting them to operate as chartered business organizations. In addition, there are some 77 tribes, bands, or identifiable groups which elected not to come under the Indian Reorganization Act but which are carrying on tribal affairs in some degree and are to some degree self-governing. A number of other Indian groups are organized under special laws pertaining to Oklahoma and Alaska.

During the years since the first group was organized under the Indian Reorganization Act, situations have been encountered from time to time that involved the misuse or misappropriation of tribal funds, the lack of adequate accounting records, or other improper actions by tribal officials. Occasionally, the same official has been guilty of repeated breeches of trust. Yet in most instances the creation of fiduciary positions has not been paralleled by corresponding safeguards in the law and order codes under which the tribes operate. Even in these instances where criminal sanctions are provided in the tribal codes, the tribal members have been extremely reluctant to bring actions in the tribal courts against apparently faithless tribal officials. The only practical recourse available to tribal members, therefore, has been to vote the malefactors out of office in the tribal elections.

Under authority of the Indian Reorganization Act, many Indian groups are qualified to obtain control of substantial sums of money derived from oil and gas leases, timber sales, and the like; to hold these funds in the tribal treasuries; and to expend them subject only to the limitations contained in the tribal constitutions and charters. In addition, under annual appropriation acts for the Department of the Interior and various special acts of Congress, tribal funds in the Treasury of the United States may be advanced to Indian tribes for such purposes as may be designated by the governing body of the particular tribe involved and approved by the Secretary of the Interior. In these circumstances, it is important that adequate penal safeguards be established to protect the tribal members from actions of dishonest or corrupt tribal officials and other types of peculation. This the proposed bill would do.

The Bureau of the Budget has advised that there is no objection to the submission of this proposed bill to the Congress.

Sincerely yours,

FRED G. AANDAHL,  
*Assistant Secretary of the Interior.*

DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D. C., December 13, 1955.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 6403)

to amend title 18, entitled "Crimes and Criminal Procedure," of the United States Code, to provide a criminal sanction for the embezzlement or theft of the property of Indian tribal organizations.

The bill would add a new section 1163 to title 18, United States Code, which would provide punishment for "whoever embezzles, steals \* \* \*, wilfully misapplies, or wilfully permits to be misapplied, any of the moneys, funds \* \* \* or other property belonging to any Indian tribal organization \* \* \*." The introduction and enactment of this measure were recommended by the Secretary of the Interior.

Under section 1153, title 18, United States Code, Federal courts have jurisdiction over offenses named in the section committed by a ward Indian against the person or property of another ward Indian in the Indian country. See *United States v. Kagama* (118 U. S. 375); *United States v. Thomas* (151 U. S. 577). Jurisdiction of other offenses committed by a ward Indian against the person or property of another ward Indian in the Indian country is in a tribal court and not a court of a State or the United States. See *United States v. Quiver* (241 U. S. 602). An exception to this rule is found in Kansas, New York, and other States where Congress, by special laws, has conferred jurisdiction on States over offenses committed by or against Indians on Indian reservations.

In your consideration of this measure, attention is invited to the words "permits to be misapplied" and "permitted to be misapplied," appearing in paragraphs 1 and 2 of the proposed new section. "Permits" is a broad term meaning, among other things, "to allow", and "to tolerate". Although this phraseology is found in section 660 of title 18, United States Code, it is believed that the words may cause enforcement difficulties and should not be incorporated in new legislation. Accordingly, it is suggested that the words "wilfully permits to be misapplied" and the words "permitted to be misapplied" be deleted from the first and second paragraphs of the proposed new section 1163.

Whether the bill should be enacted involves a question of policy on which the Department of Justice prefers to make no recommendation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,  
Deputy Attorney General.

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